

UNITED STATES OF AMERICA

v.

Manning, Bradley E.
PFC, U.S. Army,
HHC, U.S. Army Garrison,
Joint Base Myer-Henderson Hall
Fort Myer, Virginia 22211

**Prosecution Response
to Defense Witness Request:
Speedy Trial Motion**

9 October 2012

1. The prosecution has reviewed the Defense Requested Witnesses: Speedy Trial Motion, dated 24 August 2012 (hereinafter "Defense Witness Request") and the Defense Updated Requested Witnesses: Speedy Trial Motion, dated 2 October 2012.

2. The defense is purportedly requesting witnesses to explain the prosecution's activity in this case. The majority of the requests are unnecessary and/or irrelevant. The prosecution will provide evidence in its forthcoming Speedy Trial Response to support the relevant dates of prosecution activity in this case. In addition, the defense requests numerous witnesses outside of the prosecution to explain their own activity, which is not relevant to Speedy Trial litigation.

3. Pursuant to Rule for Courts-Martial (RCM) 703(b)(1), the prosecution makes the following determinations regarding these defense-requested Speedy Trial (Article 10) Motion witnesses and corrects several of the factual inaccuracies included in the defense's justification for their witness requests:

a. The prosecution will produce COL Carl Coffman either telephonically or in person. COL Coffman was the Special Court-Martial Convening Authority for this case. He excluded time pursuant to RCM 707 from 12 July 2010 to 15 December 2011.

b. The prosecution will not produce MSG (b) (7)(C). MSG Carlile's testimony is not relevant or necessary for the Speedy Trial Motion. The defense will have the opportunity to ask COL Coffman the circumstances surrounding his decisions to exclude time pursuant to RCM 707. The additional stated purpose for MSG Carlile's testimony, i.e., "the role she played" in the request to exclude the period of time between 18 March 2011 and 22 April 2011 or "her involvement in the processing of previous and subsequent requests for excludable delays to COL Coffman" is not relevant to the Speedy Trial Motion.

c. The prosecution will produce LTC Paul Almanza. LTC Almanza was the Article 32 Investigating Officer for this case. According to LTC Almanza's excludable delay memorandum, dated 11 January 2012, he excluded 24 December 2011 to 2 January 2012 and 7-8 January 2012 pursuant to RCM 707(c) because he did not work on the investigation during that time.

d. The prosecution will not produce Dr. (b) (7)(C). The reason Dr. (b) (7) requested an extension to complete the RCM 706 is documented in his extension request, dated 14 March 2011. COL Coffman granted the requested delay.

e. The prosecution will not produce the seven defense-requested Original Classification Authorities (OCAs). The prosecution also disputes the defense's alleged facts supporting the defense's request for these witnesses. Specifically, the SPCMCA gave the various reasons for granting the Article 32 delays in the excludable delay memorandums that he issued to both parties every 30 days, which included numerous reasons for excluding the delay under RCM 707. The defense proffers several topics of testimony for the requested OCA witnesses. As explored below, the reasons given are not relevant and/or not necessary.

1) The defense proffers that the OCAs will testify regarding the following: i) when the Government first contacted the specific OCA; ii) when the Government first requested the OCA to conduct a classification review; iii) the amount of times the trial counsel followed up with the OCA to determine the progression of the OCA's review; and iv) when the Government first requested the OCA to consent to disclose the classified evidence to the Defense. All of these questions were addressed in the Proposed Chronology, dated 25 September 2012, and will be further explored in the 10 October 2012 Speedy Trial Response. The witnesses, therefore, are unnecessary.

2) In addition, the defense proffers that each OCA will explain the process of complying with the Government request. Specifically, the defense alleges that each OCA will testify about the following: i) how long it took to complete the classification review and why; ii) how many people from its organization worked on the Government's request; and iii) the basis for any delay between completion of the classification review and the OCA giving consent to the Government to disclose the information. The answers to these questions and, thus, the witnesses themselves are irrelevant. The proper focus of the Defense Speedy Trial Motion is the diligence of the prosecution, not the actions of entities outside the prosecution. Asking the OCAs these defense-requested questions will not address a legitimate Speedy Trial argument.

3) Finally, the prosecution intends on calling Mr. Bert Haggett, G2, HQDA, who will address the classification review process, in general, to enable the Court to better understand the prosecution's actions.

f. The prosecution denies production of a witness from each of the below organizations. None of the witnesses are necessary. The prosecution disputes the alleged facts in the defense's justification for the witness request.

1) Headquarters Department of the Army (HQDA). The Proposed Chronology, dated 25 September 2012, addressed, and the 10 October 2012 Prosecution Response to the Defense Speedy Trial Motion will address, when the prosecution sent requests to HQDA and the prosecution's subsequent actions to expedite that request. The internal activities of the HQDA are irrelevant to the prosecution reasonable diligence for speedy trial purposes.

2) Department of State (DOS) and Diplomatic Security Services (DSS). The defense confuses the facts of what allegedly occurred during an RCM 802 Conference on 30 May 2012, based on the defense being in possession of DOS and DSS material since referral. The Proposed Chronology, dated 25 September 2012, addressed, and the 10 October 2012 Prosecution Response to the Defense Speedy Trial Motion will address, when the prosecution sent requests to

DOS and DSS and the prosecution's subsequent actions to expedite that request. The internal activities of the DOS are irrelevant to the prosecution reasonable diligence for speedy trial purposes.

3) Federal Bureau of Investigation (FBI). The Proposed Chronology, dated 25 September 2012, addressed, and the 10 October 2012 Prosecution Response to the Defense Speedy Trial Motion will address, the questions posed by the defense. The internal activities of the FBI are irrelevant to the prosecution reasonable diligence for speedy trial purposes.

4) Department of Homeland Security (DHS). The Proposed Chronology, dated 25 September 2012, addressed, and the 10 October 2012 Prosecution Response to the Defense Speedy Trial Motion will address, the questions posed by the defense. The internal activities of the DHS are irrelevant to the prosecution reasonable diligence for speedy trial purposes.

5) Office of the National Counterintelligence Executive (ONCIX). The Proposed Chronology, dated 25 September 2012, addressed, and the 10 October 2012 Prosecution Response to the Defense Speedy Trial Motion will address, the only relevant question posed by the defense in their request. Questions i-iv in the defense motion are not relevant to Speedy Trial. The internal activities of the ONCIX are irrelevant to the prosecution reasonable diligence for speedy trial purposes.

6) DIA, DISA, CENTCOM, SOUTHCOM, CYERCOM. The Proposed Chronology, dated 25 September 2012, addressed, and the 10 October 2012 Prosecution Response to the Defense Speedy Trial Motion will address, the questions posed by the defense. The internal activities of these commands are irrelevant to the prosecution reasonable diligence for speedy trial purposes.

7) DOJ. The Proposed Chronology, dated 25 September 2012, addressed, and the 10 October 2012 Prosecution Response to the Defense Speedy Trial Motion will address, the questions posed by the defense. The internal activities of the DOJ are irrelevant to the prosecution reasonable diligence for speedy trial purposes.

8) Government Agency. The Proposed Chronology, dated 25 September 2012, addressed, and the 10 October 2012 Prosecution Response to the Defense Speedy Trial Motion will address, the questions posed by the defense. The internal activities of this agency are irrelevant to the prosecution reasonable diligence for speedy trial purposes.

9) 63 Agencies. The Proposed Chronology, dated 25 September 2012, addressed, and the 10 October 2012 Prosecution Response to the Defense Speedy Trial Motion will address, the questions posed by the defense. The internal activities of these agencies are irrelevant to the prosecution reasonable diligence for speedy trial purposes.

4. The prosecution already provided a Proposed Chronology, dated 25 September 2012, which the defense could review and potentially stipulate; however, because the defense objected to the Chronology, the prosecution is in the process of preparing a new chronology.



ASHDEN FEIN
MAJ, JA
Trial Counsel

I certify that I served or caused to be served a true copy of the above on Mr. David Coombs, Civilian Defense Counsel via electronic mail, on 9 October 2012.



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MAJ, JA
Trial Counsel